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Title 34, Code of Alabama, 1975 et seq.

Section 34-31-18. Definitions

For the purposes of this chapter, the following terms shall have the meanings herein ascribed to them unless the context clearly indicates otherwise:

(1) **ADMINISTRATIVE PROCEDURES LAW.** Sections 41-22-1 through 41-22-27, and any subsequent amendment or supplement thereto, and any rules or regulations promulgated thereto.

(2) **APPRENTICE.** A person other than a certified heating, air conditioning, or refrigeration contractor, who is engaged in learning and assisting in the installation, service or repair of a heating, air conditioning, or refrigeration system and working under the direct supervision of a certified heating, air conditioning, or refrigeration contractor, and who has successfully fulfilled the voluntary registration requirements of the board and has been duly registered by the board as such for the current year.

(3) **BOARD.** The State Board of Heating and Air Conditioning, and Refrigeration Contractors, herein established.

(4) **CERTIFICATION.** The process of testing to determine the knowledge and skill of an individual with respect to heating, air conditioning, and refrigeration. This term is used herein interchangeably with the term "license."

(5) **CERTIFIED HEATING AND AIR CONDITIONING CONTRACTOR.** Any individual or any regularly employed person for any partnership or corporation who for hire is engaged in the installation or service and repair of heating and air conditioning systems.

(6) **CERTIFIED REFRIGERATION CONTRACTOR.** Any and all legal entities engaged in the business of

refrigeration contracting and servicing, installation, and repair.

(7) HEATING AND AIR CONDITIONING SYSTEMS OR SYSTEM. A heating and/or cooling apparatus consisting of an air heating and/or cooling fixture from pipes, plenums or blowers including any accessory and equipment installed in connection herewith; specifically excluding window units, automotive or farm implement type heating and/or air conditioning equipment.

(8) INSTALLATION. The act of setting up or installing a heating and air conditioning system or refrigeration system for operation and use.

(9) REFRIGERATION. The use of mechanical or absorption equipment to control temperature, humidity, or both, in order to satisfy the intended use of a specific space, other than for human comfort.

(10) REFRIGERATION TRADE OR BUSINESS. Includes any and all legal entities engaged in the installation. Maintenance. Servicing. and repairing of refrigerating machinery, equipment. devices. and components.

(11) REGULARLY EMPLOYED PERSON. A person who is an actual employee of the business, not an independent contractor. The person must work on an average of 30 or more hours per week for the heating. air conditioning. or refrigeration business. A regularly employed person must not be paid as an independent contractor and must receive a W-2 for all earnings.

(12) RESPONSIBLE CHARGE. The direction of projects involving the installation or service and repair of heating, air conditioning, and refrigeration systems requiring initiation, professional skills, technical knowledge and independent judgment.

(13) SERVICE AND REPAIR. The act of maintaining for operation a heating air conditioning or refrigeration system which has previously been installed including parts replacement within a piece of equipment.

Section 34-31-19. Purpose

The purpose of this chapter is to certify qualified contractors on a state-wide basis in order to protect the public by identifying those contractors who have the knowledge and ability to install or service and repair heating and air conditioning systems.

Section 34-31-20. Board of Heating, Air Conditioning and Refrigeration Contractors-Creation; Composition; Transfer of Property, etc.

(a) The Board of Heating and Air Conditioning Contractors as created by Act 82-547, 1982 Regular Session (Acts 1982. P. 900), is renamed the Board of Heating, Air Conditioning, and Refrigeration Contractors. The authority of the board is expanded to allow the board to examine, certify, and regulate heating, air conditioning, and refrigeration on a statewide basis

(b) The board shall consist of 12 members, who shall be subject to confirmation by the Senate. The seven initial appointments shall be effective as of July 1, 1982 as follows: One member shall be appointed by the Governor for an initial term of one year, and must be a mechanical engineer; one member shall be appointed by the Governor for an initial term of four years and must be a heating and air conditioning contractor; one member shall be appointed by the Lieutenant Governor for an initial term of three years and must be a trade representative of equipment manufacturer or supplier; one member shall be appointed by the Governor for an initial term of three years and must be a consumer from the general public; one member shall

be appointed by the Speaker of the House of Representatives for an initial term of two years and must be a trade representative of service, repair parts industry; one member shall be appointed by the Lieutenant Governor for an initial term of two years, and must be a representative from county or local inspection services department; and one member shall be appointed by the Speaker of the House of Representatives for an initial term of three years, and must be a consumer from the general public. Three additional members shall be appointed to serve four-year terms beginning on January 1, 2001. Each of these three additional members shall be heating and air conditioning contractors. One of these additional members shall be appointed by the Governor, one of these additional members shall be appointed by the Lieutenant Governor, and one of these additional members shall be appointed by the President Pro Tempore of the Senate. An additional two members, who shall be heating and air conditioning contractors, shall be appointed by the Speaker of the House of Representatives for initial terms of three years. Their successors, who shall be appointed by the same respective appointing authorities, and must possess the same respective occupational qualifications, shall each serve not more than two consecutive terms of office of four years each and until their successors are appointed and qualified. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(c) All moneys, equipment and property of the board created pursuant to Sections 34-31-1 through 34-31-17, shall, effective July 1, 1982, be transferred to the board created in subsection (a) above. The board shall pay all money received under this chapter to the State Treasurer, who shall keep the money in a separate fund for the board. All money remaining at the end of the fiscal year which exceeds 25 percent of the board's budget for the previous year shall be transferred to the State General Fund.

Section 34-31-21. Board of Heating, Air Conditioning and Refrigeration Contractors – Officers; Meetings; Powers and Duties.

(a) The board shall elect from among its members a chairman, vice chairman, and a secretary. The board may hire an executive director to serve at the pleasure of the board. The board may require the executive director to perform the duties required by this section and any other tasks required by the board. The board shall set the salary of the executive director. The board may employ a deputy director who shall serve at the pleasure of the board. The salary and compensation for the deputy director shall be set by the board and shall not exceed the salary set for the executive director.

(b) The chairman shall preside over meetings of the board. The vice-chairman shall preside over meetings of the board in the absence of the chairman. The chairman shall designate another member to preside in the absence of the chairman and vice chairman.

(c) The secretary or, if directed by the board, the executive director shall perform the following tasks:

- (1) Keep all minutes, books, records, and files of the board.
- (2) Issue all certificates in the name of the board.
- (3) Send all notices and attend to all correspondence directed by the board.
- (4) Receive and deposit all fees.
- (5) Perform all incidental duties of the office as directed by the board.

(d) The secretary shall give bond, payable to the Governor, in the penal sum of \$5,000.00 for the faithful

performance of his duties, and the premium therefor shall be paid from the fees of the board.

(e) No moneys shall be withdrawn from the funds of the board except by direction of the board as provided by state law.

(f) A majority of the board shall constitute a quorum for the transaction of all business.

(g) The board is also authorized to adopt and publish minimum repair and service standards for its certified contractors, and shall mail a copy thereof to every certified contractor at least 30 days before the standard of criteria becomes effective. Certified contractors who fail to comply with such minimum standards and criteria shall be punished as prescribed in Section 34-31-32(a).

(h) The board is authorized to hold hearings, call witnesses, administer oaths, take testimony and obtain evidence in the conduct of its business. It is further authorized to take such disciplinary actions as are authorized in subsection (c) of Section 34-31-32.

Section 34-31-22. Board of Heating, Air Conditioning and Refrigeration Contractors – Compensation

Each member of the board shall receive one hundred dollars (\$100) per day for attending sessions of the board or its committees and, in addition, shall be reimbursed for such necessary travel expenses as are paid to state employees, to be paid from fees collected.

Section 34-31-23. Board of Heating and Air Conditioning Contractors – Regular Meetings

The board shall meet in a regular session to perform its lawful duties at least once each three-month period.

Section 34-31-24. Only Certified Contractors to Advertise, etc; Certificate of Qualification required for Licensure.

(a) No individual, partnership or corporation shall advertise, solicit, bid, obtain permit, do business, or perform the function of a certified contractor unless the person or persons in responsible charge, as defined in Section 34-31-18(7), are certified contractors.

(b) Every contractor licensed under this chapter shall display the contractor's certification number and the company name on any and all documentation, forms of advertising, and on all service and installation vehicles used in conjunction with heating, air conditioning, and refrigeration contracting.

(c) A contractor licensed under this chapter may not permit the use of his or her license by any other persons.

(d) No official charged with the duty of issuing licenses to any individual, partnership or corporation to operate a business as a certified contractor shall issue such license unless there is presented for inspection a certificate of qualification as provided for herein issued by the board to the individual or to some person in responsible charge with the partnership or corporation.

Section 34-31-25. Application and Renewal Fees; Use of Penalties Collected.

(a) For the purpose of defraying the expense in carrying out the provisions of this chapter, the board may fix fees to be paid by applicants for certificates, but in no event shall the charge fixed by said board exceed two hundred dollars (\$200). All fees fixed by the board must accompany the application for examination, and no part of said fees shall be refunded. Said fees shall be received by the board and held solely for the purpose of paying the expense of carrying out the provisions of this chapter.

(b) Fees for apprentice registration and annual renewal fees shall not exceed fifty dollars (\$50.00).

(c) All penalties collected by the board shall be used in the same manner and for the same purpose as fees.

(d) Renewal fees shall be established by the board to insure adequate funding to support the board. Fees shall not exceed two hundred dollars (\$200) per year. The amount of these fees shall be established by the board on an annual basis to provide adequate funding to support the board and to pay the expenses incurred for applications, examinations, and/or renewals of licenses.

Section 34-31-26. Renewal of Certificates; Inactive status; Continuing Education.

(a) All certificates provided for herein shall be renewed annually, not later than 90 days after the first day of October of each year. All holders of certificates may be renewed annually, provided that the certified contractor has complied with all provisions of law and rules and regulations of the board thereof, upon payment of a renewal fee set forth by the board as provided for in this chapter.

(b) Any person certified by the board may elect an inactive status certificate by notifying the board in writing. The fee for the issuance and renewal of an inactive status certificate shall be established by the board in an amount not to exceed one-half of the amount set for fees pursuant to Section 34-31-25.

(c) The board shall provide by rule or regulation those activities which an inactive status certificate holder may engage in, and for a procedure for the reinstatement as an active status certificate holder.

(d) The board shall adopt an annual program of continuing education for its certified contractors by January 1 of each year. All certified contractors shall be required to complete four hours of continuing education every year. This minimum continuing education requirement will begin during the calendar year 2001. All certified contractors will be required to complete the minimum continuing education requirements prior to renewal in all years beginning January 1, 2002.

(e) The failure to complete the minimum continuing education shall prevent the renewal of the certified contractor's license until proof of compliance with the continuing education requirement is submitted to the board. The board may permit a certified contractor to submit a deficiency plan to the board for approval by January 1 of each year for medical hardships and emergencies that prevent the certified contractor from complying with the continuing education requirements on time. This deficiency plan shall be specific in describing the plan for full compliance with the continuing education requirement and shall be accompanied by a deficiency plan fee established by the board.

(f) The board shall adopt rules that prescribe the policies, procedures and fees for obtaining board approval

of the providers. courses, and instructors for the continuing education program.

Section 34-31-27. Form of Applications for Examinations, Certificates and Renewal Certificates.

All applicants for examinations and certificates and all applicants for renewal certificates shall be required to fill out a form which shall be provided by the board.

Section 34-31-28. Examinations for Certification; Performance Bond; Further Testing by Localities Prohibited.

(a) All prospective certified contractors in this state desiring to qualify in accordance with the provisions of this chapter shall be required to stand for a written examination before the board. Any applicant failing to pass his first examination for a certificate shall be entitled to take any subsequent examination, either written or, upon request of the applicant, an oral or practical examination which is equivalent to the written examination, to be held within six months from the date of his first or latest unsuccessful examination.

(b) The board shall register every person who may apply for an apprentice heating, air conditioning, or refrigeration registration certificate upon forms provided by the board and upon payment of all prescribed fees.

(c) The board shall examine the character, fitness, and the qualifications of every person who applies for a certified heating, air conditioning, or refrigeration contractor license upon forms prescribed by the board and upon payment of all prescribed fees.

(d) An applicant for examination for a heating, air conditioning, or refrigeration certified contractor license shall be eligible to stand for the examination if the applicant has held an apprentice registration, issued by this board, for two or more calendar years; or has completed 3,000 hours of coursework or experience, as defined by the board: or is a graduate of an approved heating, air conditioning, or refrigeration curriculum.

(e) All legal entities engaged in the refrigeration business for a period of two years prior to the date of passage of the act this subsection, may apply to the board for a certified refrigeration contractor license without standing for a written examination. The applicant shall provide evidence of such experience to the board as promulgated in the rules of the board. An applicant who does not apply for such certification by December 31, 2011, must stand for the written examination.

(f) Counties, municipalities, or other local entities are hereby prohibited from requiring any further local testing or other requirements of certified contractors, subject to the payment of any applicable local privilege, license, or business fees or charges.

(g) Persons licensed by the Alabama Liquefied Petroleum Board are exempt from this chapter pertaining to heating, air conditioning, and refrigeration when:

(1) Engaged in the installation, repair, or replacement of a liquefied petroleum gas appliance so long as the appliance is not connected to a refrigeration system, except that such persons may also engage in the replacement or repair of a liquefied petroleum gas central heating unit when it is combined with an air conditioning unit.

(2) Engaged in the installation of a venting system required for a vented-type liquefied petroleum gas appliance.

(h) This chapter does not apply to:

(1) An authorized employee of the United States, the State of Alabama, or any municipality, county, or other political subdivision, if the employee does not hold him or herself out for hire or otherwise engage in contracting except in accordance with his or her employment.

(2) Any mobile home or manufactured structure that is installed, inspected or regulated by the Alabama Manufactured Housing Commission; however the repair servicing of a heating and air conditioning system, or the installation of a new heating and air conditioning system in a previously inspected manufactured structure is subject to this chapter.

(3) Persons performing work on motor vehicles, residential refrigerators or ice machines.

(4) Household appliances.

(5) Farm equipment.

(6) Poultry operations whether engaged in hatching, primary processing or further processing of chicken, turkey, or other fowl.

Section 34-31-29. Examinations Generally; Reciprocity Agreements.

(a) The board shall provide for examinations which test the knowledge, skill, and proficiency of the applicants.

(b) Examinations shall be held at such time and place as may be fixed by the board at least once each three-month period. Written notice of the place of examinations shall be

mailed to all persons who have filed current applications for the examinations of the board.

(c) The board may charge each applicant and retesting applicants for examination a reasonable fee based on the actual costs for administering the examinations. Applicants must stand for the examination within one year from the date the board receives the examination application and fees, otherwise the applicant must resubmit an application and appropriate fees.

(d) The board may enter into reciprocity agreements with other states to permit Alabama certified contractors to engage in work in other states in exchange for that state's contractors being permitted to perform work in Alabama. This provision recognizes the status of the certified contractor as having passed the examination; however, all certification fees are required to be paid.

Section 34-31-30. Bond Requirement Authorized.

The board may require a performance bond in the amount of fifteen thousand dollars (\$15,000) per year for all active certified contractors. There shall be no discrimination between contractors similarly situated, and each classification of regulated contractors for bonding purposes must be reasonable in light of the purpose of the bond.

Section 34-31-31. List of certified contractors.

The board may publish annually a list of names, addresses of all individuals and the name of their employer, if applicable, who are certified by the board, and shall mail a copy of said list to all qualified individuals so certified upon request to do so. The board may require a reasonable fee to cover the cost of producing and mailing said directory.

Section 34-31-32. Violations; Penalties.

(a) Any person engaged in business as a certified contractor or performing the functions of a certified contractor in violation of this chapter shall be guilty of a Class A misdemeanor, as defined by the state criminal code.

(b) The board may, at its discretion, impose a late penalty on those certified contractors who fail to renew certificates by December 31 of each year. The board may also remove certification from any certified person who fails to renew his certificate by the first day of March, and require said person to apply for a new certificate. Furthermore, the board may at its discretion, remove, revoke or suspend the certification from any certified contractor who provides substandard or dangerous service repair, or installation, or who otherwise violates a provision of this chapter, and may require such person to apply for a new certification. The board may, in its discretion, also require the successful re-testing of any such person who applies for a new certification.

(c) The board is hereby authorized to reprimand, in writing, any certified contractor who provides substandard or dangerous service, repair or installation, or who otherwise violates a provision of this chapter.

(d) The board may levy and collect administrative fines for serious violations of this chapter or the rules and regulations of the board of not more than \$2000 for each violation.

(e) In addition to or in lieu of the criminal penalties and administrative sanctions provided in this chapter, the board may issue an order to any person, firm, or corporation engaged in any activity, conduct, or practice constituting a violation of this chapter, directing the person, firm, or

corporation to forthwith cease and desist from the activity, conduct, practice, or performance of any work then being done or about to be commenced. The order shall be issued in the name of the State of Alabama under the authority of the board. If the person, firm, or corporation to whom the board directs a cease and desist order does not cease or desist the proscribed activity, conduct, practice, or performance of work immediately, the board shall cause to issue in any court of competent jurisdiction and proper venue, a writ of injunction enjoining the person, firm, or corporation from engaging in any activity, conduct, practice, or performance of work prohibited by this chapter. Upon showing by the board that the person, firm, or corporation has engaged or is engaged in any activity, conduct, practice, or performance of work prohibited by this chapter, the courts shall issue a temporary restraining order restraining the person, firm, or corporation from engaging in such unlawful activity, conduct, practice, or performance of work pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after the hearing, commanding the cessation of the unlawful activity, conduct, practice, or performance of work complained of, all without the necessity of the board having to give bond. A temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to this subsection shall not be subject to being released on bond. In the suit for an injunction, the board may demand of the defendant a fine of up to five hundred dollars (\$500) plus costs for each offense. Anyone violating this chapter who fails to cease work, after a hearing and notification from the board, shall not be eligible to apply for a certified contractor's license for a period not to exceed one year from the date of official notification to cease work. It shall be within the power of the board to withhold approval, for up to six months, of any application from anyone who prior to the application has been found in violation of this chapter.

Section 34-31-33. Procedure.

Said procedures shall be same as those defined in the Alabama Administrative Procedure Act, Chapter 22 of Title 41. The board may establish additional procedures as needed provided that said procedure is published and made public and are not in conflict with the state law.

Section 34-31-34. Appeals.

Any appeals to the chapter shall be as defined by the Alabama Administrative Procedure Act, Chapter 22 of Title 41.

Section 34-31-35. Sunset provision.

The State Board of Heating, Air Conditioning and Refrigeration Contractors shall be subject to the Alabama Sunset Law, Title 41, Chapter 20, as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2004, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.

ADMINISTRATIVE RULES and REGULATIONS

440-X-1-.01 Definitions

(1) *Code of Alabama 1975*, Section 34-31-18, provides for definitions of the following terms: “certified contractor, “ “installation,” “service and repair,” “board,” “heating, air conditioning and refrigeration system or systems,” “administrative procedures law: and “responsible charge.”

(2) *Act*. The term “Act” as used in these rules shall mean Title 34, Chapter 31 of the *Code of Alabama* regulating the heating, air conditioning and refrigeration contractors industry.

(3) *Alabama Administrative Procedure Act*. The term “Alabama Administrative Procedure Act” refers to the Act codified at Title 41, Chapter 22, of the *Code of Alabama*.

(4) *Board*. The term “Board” as used in these Rules shall mean the State Board of Heating, Air Conditioning and Refrigeration Contractors. The Board shall be comprised of members appointed by the Governor, Lieutenant Governor, Speaker of the House, and President Pro Tempore of the Senate pursuant to Section 34-31-20, *Code of Alabama 1975*. The public may make submissions and requests to the Board in writing at the following mailing address:

State of Alabama
Board of Heating, Air Conditioning
and Refrigeration Contractors
8 Commerce Street, Suite 200
Montgomery, Alabama 36130-5025

(5) Certificate. The term “certificate” as used in these Rules shall mean a certificate issued to or renewed by a certified contractor by the Board pursuant to the Act.

(6) Certified Contractor. The term “certified contractor” as used in these Rules shall mean any individual or any regularly employed person for any partnership or corporation who for hire is engaged in the installation or service and repair of heating, air conditioning or refrigeration systems; provided that nothing in this chapter shall apply to retail sellers of heating, air conditioning or refrigeration systems who do not install said systems themselves. A certified contractor is authorized to install or service and repair or replace natural gas heating, air conditioning or refrigeration appliances, including specifically the servicing, repair, or replacement of those appliances, including specifically the servicing, repair, or replacement of those appliances in manufactured housing set up as stationary housing, but excluding the piping to such appliances, and except as otherwise prohibited by law.

(7) Retail Seller. The term “retail seller” shall mean any person (as defined in these rules) who sells a heating, air conditioning or refrigeration system or systems, but does not provide for the service, repair or installation of said system.

(8) Inactive Contractor. The term “inactive contractor” refers to any certified contractor who elects to obtain inactive status as a certified contractor. To obtain status as an inactive contractor, the certified contractor shall notify the Board in writing of his desire to seek inactive contractor status and return his licensing card reflecting his status as a certified contractor. The Board shall then issue the contractor an inactive contractor licensing card. Inactive contractors shall be required to pay an annual licensing fee in an amount that does not exceed one-half of the annual licensing fee for certified contractors. An “inactive

contractor” shall not be eligible or allowed to purchase local licenses or be issued any permits to perform installation, service, or repair work, or to solicit or bid to perform installation, service or repair work, on heating, air conditioning or refrigeration systems. An inactive contractor may be allowed by the Board to reactivate certification as a “certified contractor” at any time by notifying the Board in writing of his desire to return to “certified contractor” status and by informing the Board that he or she has obtained the proper bond pursuant to Alabama law and the Rules and Regulations of the Board. The inactive contractor shall also submit payment to the Board of the difference in fees between “certified contractor” and “inactive contractor” status.

(9) Person. The term “person” as used in these Rules shall mean any natural person, limited or general partnership, corporation, association, limited liability company, or other legal entity, or any combination thereof.

(10) Bond. The term “bond” as used in these Rules shall mean that performance bond described in the Act.

(11) Minimum Standards. The term “minimum standards” as used in these Rules shall mean those minimum repair and service standards adopted for certified contractors by the Board pursuant to the Act.

(12) Continuing Education. The term “continuing education” as used in these rules shall mean the required hours of continuing education required by state law for certified contractors.

(13) Regularly Employed Person. The term “regularly employed person” as used in these rules shall mean a person who is an actual employee of the business, not an independent contractor who works at least 30 hours or more

per week and receives a W-2 wage form not a 1099 form from the employer.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-18;

Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-2 Organization and Administrative Procedures of the Board.

440-X-2-.01. Purpose.

The Alabama Board of Heating, Air Conditioning and Refrigeration Contractors was created to certify qualified contractors on a state-wide basis in order to protect the public by identifying those contractors who have the knowledge and ability to install, service, or repair heating, air conditioning or refrigeration systems.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-19;

Act No. 2009-486

History Filed: January 21, 2003; June 19, 2009

440-X-2-.02. Officers.

The Board annually shall elect from its members a chairman, vice-chairman, and a secretary. The chairman shall preside over meetings of the Board when present and shall appoint all committees of the Board. The vice-chairman shall preside over meetings of the Board in the absence of the chairman. The chairman shall designate another member to preside at meetings from which both the chairman and vice-chairman are absent. The secretary of the Board shall keep all minutes, books, records, and files of the Board; shall issue all certificates in the name of the Board; shall send all notices and attend to all

correspondence directed by the Board; shall receive and deposit fees; and shall perform all incidental duties of the office as directed by the Board. The secretary shall give bond, payable to the Governor, in the penal sum of Five Thousand Dollars (\$5,000.00) for the faithful performance of his duties, and the premium thereof shall be paid from the fees of the Board. No moneys shall be withdrawn from the funds of the Board except by direction of the Board as provided in state law.

Author: Mark Montiel

Statutory Authority: Code of Alabama 1975, Section 34-31-21

History: Filed January 21, 2003

440-X-2-.03. Executive Director.

The Board may select and hire an executive director to serve at the pleasure of the Board. The executive director shall be responsible for the administration of Board policies. The executive director shall perform duties assigned by the Board and shall perform the duties of the secretary of the Board if directed by the Board. The executive director shall also fulfill the duties assigned to the executive director or executive secretary as described in the Alabama Administrative Procedure Act. The executive director shall be designated as the agent for the Board for service of legal process upon the Board. The executive director shall have custody of and shall safeguard and keep in good order all property and records of the Board. The executive director shall sign all instruments and matters that require approval of the Board. The executive director shall receive and deposit all funds to the credit of the board in the State Treasury and shall review all bills before requesting the State Comptroller to make payment of any accounts. The executive director shall keep the records of the Board which shall include, without limitation, all applications for certification by the Board and supporting documentation; a complete and permanent record of all applications that fail to

result in certification; evidence of the important business transactions of the Board; a complete and permanent record of all certifications issued by the Board; and a record of all enforcement and disciplinary actions taken by the Board. All correspondence to the Board, including requests for information and the submission of requests, shall be made to the executive director at the Board's office in Montgomery, Alabama.

Author: Mark Montiel

Statutory Authority: Code of Alabama 1975, Section 34-31-21(a)

History: Filed January 21, 2003

440-X-2-.04. Deputy Director and Other Staff

- (1) The Board may also employ a deputy director who shall serve at the pleasure of the Board. The salary and compensation of the deputy director shall be set by the Board and shall not exceed the salary set for the executive director.
- (2) The Board may also employ other full time or part time administrative staff who shall work under the direction and supervision of the executive director.
- (3) All Board staff, including the executive director and deputy director, shall be entitled to reimbursement for travel the same as other employees of the State of Alabama, including actual expenses for authorized out-of-state travel, and per diem and transportation costs for in-state travel.

Author: Mark Montiel

Statutory Authority: Code of Alabama 1975, Section 34-31-21(a)

History: Filed January 21, 2003

440-X-2-.05. Meetings.

- (1) The Board shall conduct regular meetings to perform its lawful duties at least once in each three-month period.
- (2) The Board may meet on other occasions as necessary to conduct its business and to comply with state law and the Rules and Regulations of the Board. Special meetings of the Board may be called by the chairman or by a majority of the members of the Board.
- (3) Each member of the Board shall be given at least ten days notice of the time, place, and purpose of any regular meeting. This notice may be waived by the individual member and is waived by the member's presence at the called meeting. Each member of the Board shall receive reasonable notice for all called special meetings. The executive director shall provide reasonable notice to the public of all regular and special meetings of the Board as appropriate under the circumstances.
- (4) A majority of the Board shall constitute a quorum for the transaction of all business.
- (5) The Board may meet at its Board offices in Montgomery, Alabama or such other location as designated to conduct the business of the Board.
- (6) Each member of the Board shall receive One Hundred Dollars (\$100.00) per day for attending sessions of the Board or its committees and, in addition, shall be reimbursed for such necessary travel as are paid to state employees, to be paid from fees collected by the Board.

Author: Mark Montiel

Statutory Authority: Code of Alabama 1975, Section 34-31-21, 34-31-23

History: Filed January 21, 2003

440-X-2-.06. Voting.

All Board members, including the chairman, are entitled to make or second motions. A majority of those members of the Board present and voting on any matter shall decide the matter before the Board. The chairman and other officers of the Board shall be allowed to vote on matters the same as other members of the Board. Votes of the Board shall be included in the minutes of the Board and kept as part of the permanent records of the Board.

Author: Mark Montiel

Statutory Authority: Code of Alabama 1975, Section 34-31-21

History: Filed January 21, 2003

440-X-2-.07. List of Certified Contractors.

The Board may publish annually a list of names and addresses of all individuals certified by the Board. The Board may also publish the list of certified contractors on the Board's designated website. The Board may provide, upon request to the Board, a copy of said list to persons and may require a reasonable fee to cover the costs of producing and mailing said directory.

Author: Mark Montiel

Statutory Authority: Code of Alabama 1975, Section 34-31-31

History: Filed January 21, 2003

440-X-2-.08. Advisory Opinions.

The Board may, in its discretion, issue an advisory opinion to any certified contractor, governmental official, or entity substantially affected by a Rule or statute enforceable by the Board. Board advisory opinions may address the

applicability of such Rules or statutes and other matters to assist the certified contractor, government official, or entity with the meaning and scope of the orders of the board and the Rules and Regulations of the Board. All requests for advisory opinions must be in writing and must specifically state that it is a “request for an advisory opinion”. The Board’s general counsel shall assist the Board as necessary in responding to these requests for advisory opinions.

Author: Mark Montiel

Statutory Authority: Code of Alabama 1975, Sections 34-31-33

History: Filed January 21, 2003

440-X-3. LICENSING AND FEES

440-X-3-.01. Requirements for Licensing of Certified Contractors

(1) All certified contractors shall have and maintain a current license issued by the Board. A license is current only during the calendar year in which it is issued and shall expire on December 31 of each year. Unless renewed, a license shall automatically lapse at the end of the calendar year in which it was issued.

(2) Certification by the Board is required for all persons employed by realty management companies who manage property owned by others if they perform heating, air conditioning or refrigeration installation, service, or repair work.

(3) Certification by the Board is also required for work involving air duct cleaning services, filter changing services test and balance services, replacement of air filters or filter media, and the cleaning of heating, air conditioning or refrigeration equipment or systems.

(4) Certification by the Board is also required for heating and air conditioning installation, service, or repair work performed on site in manufactured or modular homes.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-19; 34-31-26; Act No 2009-486.

History: Filed January 21, 2003; June 19, 2009

440-X-3-.02. Filing Requirements

All applications for licensing with the Board, including annual renewals and all other submissions to the Board required by these rules, shall be deemed filed when received by the executive director or his designee. The executive director or his designee may reject all applications for licensing and annual renewals that are inaccurate, incomplete or for which all fees and pending administrative fines have not been paid at the time the application or renewal is filed.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-26

History: Filed January 21, 2003

440-X-3-.03. Form of Licensing.

(1) Licenses shall be issued only to those persons or legal entities who have properly submitted their applications to the Board under Alabama law and the Rules and Regulations of the Board, and who have taken and passed the Board's written examination on the Board's practical examination as provided in Alabama law.

(2) Any individual applying for a heating and air conditioning license applying for a license must personally

satisfy all licensure requirements before issuance of the license as certified contractor by the Board.

(3) Any person or legal entity applying for a Refrigeration license must satisfy all licensure requirements before issuance of a license as a certified refrigeration contractor by the Board.

(3) All applicants for certified contractor status and all annual renewals shall provide a performance bond in the amount of Fifteen Thousand Dollars (\$15,000.00) to the Board.

(4) Any applicant for certification by the Board who proposes to engage in the business of Heating and Air Conditioning installation, service, or repair as a partnership, corporation, business trust, or other legal entity must apply through a person in responsible charge as defined by Alabama law and the Rules and Regulations of the Board. The application to the Board shall provide the name of the partnership and its partners, the name of the corporation and its officers and directors, the name of the business trust and its trustees, or the name of any other legal entity and its members. The application to the Board shall establish that the person in responsible charge under Alabama law and these Rules and Regulations is legally qualified to act for the business organization in all matters connected with its heating, air conditioning installation, service, or repair business. The heating and air conditioning certification by the Board issued upon such application described in this Rule shall be issued in the name of the person in responsible charge and shall include the name of the business organization engaged in the heating, air conditioning installation, service, or repair business.

(5) Any applicant for certification by the Board who proposes to engage in the business of Refrigeration installation, service, or repair as a legal entity must apply

through a person in responsible charge as defined by Alabama law and the Rules and Regulations of the Board, and has met the qualifications to be a certified contractor. The application to the Board shall provide the name of the partnership and its partners, the name of the corporation and its officers and directors, the name of the business trust and its trustees, or the name of any other legal entity and its members. The application to the Board shall establish that the person in responsible charge under Alabama law and these Rules and Regulations is legally qualified to act for the business organization in all matters connected with its Refrigeration installation, service, or repair business. The certification by the Board issued upon such application described in this Rule shall be issued in the name of the business organization engaged in the refrigeration installation, service, or repair business.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-226; 34-31-28; 34-31-30; Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-3-.04. Exemptions.

The licensing requirements for certified contractors do not apply to the following:

(1) Retail sellers of heating, air conditioning or refrigeration systems who does not provide installation of said systems, or provides for the contracting for the service, repair or installation of said systems;

(2) Heating and air conditioning installation, service or repair work performed by an owner of a building on said building owned by him or her;

(3) Heating and air conditioning installation, or service and repair, performed by anyone who is regularly

employed as a maintenance person incidental to and in connection with the business in which he is employed, provided said heating and air conditioning work is done on the premises of said owner, and repair-person does not engage in heating and air conditioning work for others.

(4) In instances where a certified heating and air conditioning contractor bids installation work and is responsible for obtaining all necessary and required permits, the certified contractor may subcontract the installation of duct work to an uncertified person who is performing the work under the supervision of the certified contractor as the person in responsible charge. The certified contractor is responsible for all such work performed and is considered by the Board as the person in responsible charge for such work should the work fail to meet the minimum standards under these Rules. This exemption does not apply to design and installation of duct work not performed under the responsible supervision of a certified contractor.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-18; Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-3-.05. Failure to Renew License.

(1) Any certified contractor who does not renew his certification at the end of a calendar year and who remains unlicensed for a period of one calendar year or more shall be required to apply as a new applicant and will be required to pass the written examination offered by the Board.

(2) Any certified contractor who has previously passed the written examination but has not renewed his certification at the end of a calendar year shall have until December 31 of the calendar year following lapse of

certification to renew his certification without additional testing by the Board. However, additional fees will be imposed.

Example (1) Certified contractor Jones holds an active certification for the year of 2002. On December 31, 2002 his certification lapsed. The Board receives his accurate and complete renewal form for 2003 on February 15, 2003, along with a check for \$265.00: \$165.00 active renewal fee, \$100.00 late fee.

(3) Any certified contractor who wishes to renew their certification on or after March 1st and prior to April 1st of the calendar year following the lapse of certification shall be required to pay a penalty fee in addition to any other late fees established by the Board.

Example (2) Certified contractor Smith holds an active certification for the year of 2002. On December 31, 2002 his certification lapsed. The Board receives his accurate and complete renewal form for 2003 on March 15, 2003, along with a check for \$515.00: \$165.00 active renewal fee, \$100.00 late fee, and \$250.00 penalty fee.

(4) Any certified contractor who wishes to renew their certification on or after April 1st of the calendar year following the lapse of certification shall be required to pay a delinquent fee in addition to all late and penalty fees established by the Board.

Example (3) Certified contractor Brown holds an active certification for 2002. On December 31, 2002 his certification lapsed. The Board receives his accurate and completed 2003 renewal form on April 15, 2003, along with a check for \$1,015.00: \$165.00

active renewal fee; \$100.00 late fee, \$250.00 penalty fee and \$500.00 delinquent fee.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-25; 34-31-26

History: Filed January 21, 2003; June 19, 2009

440-X-3-.06. Alternative Methods of Testing

After an individual has taken the written examination without achieving a passing examination score, an individual, upon specific written request to the Board, will be given an opportunity to take a practical examination equivalent to the written examination. This practical examination shall be held within six months from the date of the applicant's first or latest unsuccessful written examination if requested by the applicant.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-28

History: Filed January 21, 2003

440-X-3-.07. Certification of Refrigeration Contractors by Grandfathering.

All legal entities engaged in the refrigeration business must submit an application and appropriate fees to the board in order to receive a refrigeration contractors license.

All legal entities engaged in the refrigeration business for a period of two years prior to August 1, 2009, will be eligible to apply to the board for a certified refrigeration contractor license without standing for a written examination.

The applicant shall provide evidence of such experience to the board and applicant will have until December 31, 2011, to apply for such certification without standing for a written examination. Beginning on January 1, 2012, all applicants for a refrigeration contractors license

must stand for the written examination testing experience and ability.

An applicant will be deemed to have sufficient experience in the refrigeration business only if they have been engaged in the refrigeration business for a period of two years prior to August 1, 2009 and provides the documentation requested below:

1. The applicant submits documentation to the board proving that the name or the trade name of the applicant, or its responsible in charge, currently holds or held an occupational license as a refrigeration contractor issued by the State Board of General Contractors prior to August 1, 2009; and/or,
2. The applicant submits documentation to the board proving that the name or the trade name of the applicant, or its responsible in charge, currently holds or held a business or occupational license as a refrigeration contractor issued by a county or municipality prior to August 1, 2009; and/or,
3. The applicant submits documentation to the board proving that the name or trade name of the applicant, or its responsible in charge, currently holds or held a permit issued by the Alabama Department of Labor prior to August 1, 2009; and/or,
4. The applicant submits to the Board sworn statements signed by the owner(s) of the property attesting to the fact that the applicant was in fact responsible for the service, maintenance or installation of the refrigeration system performed for a period of two years, prior to August 1, 2009; and/ or,
5. Provides a copy of a Universal, Type II or Type III refrigerant card issued by the Environmental

Protection Agency which was issued, and has been held for a period of two years, prior to August 1, 2009.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-28(b); Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-3-.08. Procedure in the Event of a Loss of Certified Contractor.

(1) In the event a certified contractor in responsible charge leaves by termination, layoff, or voluntary resignation a partnership, corporation, business trust, or other legal entity operating under the certification of the certified contractor, the certified contractor shall notify the Board within ten (10) days of the termination, layoff, or voluntary resignation.

(2) In the event of the death of a licensed certified contractor, the Board shall be notified within ten (10) days by any partnership, corporation, business trust, or other legal entity operating under the certification of the certified contractor as the person in responsible charge. These business entities may be allowed to complete work that was in progress at the time of the death of the certified contractor. These business entities shall not enter into any new contracts, verbal or written, or engage in the installation or service and/or repair of any heating, air conditioning or refrigeration systems, unless under the direction of a certified contractor in responsible charge of the installation, service, or repair of the heating, air conditioning or refrigeration systems. Once a certified contractor has been selected, the business entity must notify the Board of such selection.

Author: Mark Montiel, Kathy LeCroix

**440-X-3-.09. Person in Responsible Charge and
Obligations of Person in Responsible Charge.**

(1) The person in responsible charge must direct the projects involving the installation or service and repair of heating, air conditioning or refrigeration systems under Alabama law. The person in responsible charge must be a full-time employee, owner, partner, or corporate officer of the partnership, corporation, business trust, or other legal entity. This person in responsible charge must possess the requisite skill, knowledge, and experience and have the responsibility to supervise, direct, manage, and control the installation, service, or repair activities of the business entity with which he is affiliated. The Board shall examine the technical and personal qualifications of the person in responsible charge and may investigate and/or examine that person's qualifications.

(2) If the person in responsible charge of a business entity desires to qualify an additional business entity as being under his certification with the Board, that person is required to appear at a meeting of the Board and present evidence of ownership, ability to supervise, direct, manage and control that business entity. The person in responsible charge must also present evidence at or before this Board meeting of his financial responsibility for the additional business entity. The person in responsible charge shall also pay an additional licensing fee to the Board for this additional business entity and shall provide a bond in the amount required for certified contractors under these Rules. It is entirely within the Board's discretion to allow or disallow the additional business entity to be certified under the certified contractors responsible charge.

(3) The certified contractor is responsible for all electrical and gas piping work performed on residential property or light commercial, up to ten (10) tons cooling capacity, and is considered by the Board as the person in responsible charge for such work should the work fail to meet the minimum standards under these Rules.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: Code of Alabama 1975, Section 34-31-18; Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-3-.10. Fees and Charges.

(1)The following fees and charges have been established by the Board:

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|--|----------|
| (a) Written examination fee to defray costs of testing | \$150.00 |
| (b) Practical examination fee to defray costs of testing | \$350.00 |
| (c) Initial Fee for Certification of a Heating & Air Conditioning License | \$165.00 |
| (d) Annual Renewal Fee for Active Heating & Air Conditioning Certification | \$165.00 |
| (e) Initial Fee for Certification of a Refrigeration License | \$165.00 |
| (f) Annual Renewal Fee for Active Refrigeration Certification | \$165.00 |
| (i) Late fee for active certification renewal received after December 31 | \$100.00 |
| (ii) Penalty fee for renewal received | |

on or after March 1 and prior to March 31 (in addition to late fee)	\$250.00
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(iii) Delinquent penalty for renewal received on or after April 1 (in addition to late and penalty fee)	\$500.00
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(g) Annual renewal fee for Inactive Heating and Air Conditioning Contractors	\$ 82.50
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(h) Annual Renewal Fee for Inactive Refrigeration Contractors	\$ 82.50
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(Inactive contractors are not eligible to purchase local licenses or permits until the inactive contractor returns to an active certified contractor status and meets all requirements for licensing as an active certified contractor, including payment of the proper fee(s))

(i) Late fee for the renewal of inactive status received after December 31 and prior to March 1	\$ 50.00
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(ii) Penalty fee for renewal received or after March 1 and prior to March 31 (in addition to late fee)	\$250.00
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(iii) Delinquent penalty for renewal received on or after April 1 (in addition to late and penalty fees)	\$500.00
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(i) Issuance of Replacement Certification Cards	\$ 25.00
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(j) Administrative fee for continuing education deficiency plan	\$ 25.00
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(k) Dishonored check fee	\$ 30.00
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(l) Continuing Provider Application Fee	\$ 75.00
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(m) Continuing Education Course Fee	\$ 25.00
(n) Continuing Education Instructor Fee	\$ 25.00
(o) Non-Traditional Continuing Education Application	\$ 25.00
(p)Apprentice Registration for Heating & Air Conditioning or Refrigeration	\$ 25.00
(q) Apprentice Registration Late Fee (If received by the Board later than December 31)	\$ 50.00

(2) Examination fees to defray the costs of testing are in addition to the fees required for initial certification, renewals, inactive contractor status, and the penalty for late renewals.

(3) All fees established by the Board shall be submitted with the application for examination to become certified with the Board, and no part of said fees shall be refunded. These fees shall be received by the Board and held for the purpose of paying the expenses associated with processing the application and to pay the expenses associated with testing.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Sections 34-31-25; 35-31-29; 34-31-32, Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-3-.11. Replacement Licenses.

The Board shall issue a replacement license for a certified contractor who submits a written, sworn, and notarized statement to the Board that includes information establishing the following:

(1) That the certified contractor's current license has been stolen, taken, lost, destroyed, or defaced; or

(2) That the certified contractor's name has been changed by marriage or court order. If the certified contractor seeks issuance of a replacement licensed to accommodate a name change, the originally issued certification card must be returned to the Board as a condition of the issuance of the new certified contractor card.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-27; Act no. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-3-12 Dishonored Checks

If the Board receives a check that has been dishonored by the financial institution that it was drawn on, the Board may charge a dishonored check fee as set by the Code of Alabama and established by these regulations. Pursuant to Code of Alabama 1975, § 8-8-15, this fee must accompany any check, or other negotiable instrument drawn on a bank or other depository institution and made payable to the Board, if the instrument is not paid or is dishonored by the institution. The Board may suspend the certified contractor's license until such time this fee, including the amount of the dishonored check, has been received by the Board.

Author: Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 8-8-15

History: Filed June 19, 2009

440-X-3-13 Building Official Waiver

(1) Any building official or mechanical inspector who holds an inactive heating and air conditioning license and/or refrigeration license, or who has sat for and passed the examination for certification shall not be required to submit

payment of fees for an inactive certification if they meet one of the following requirements:

- a) Maintaining International Code Council certification as a certified:
 - 1) Residential Mechanical Inspector,
 - 2) Commercial Mechanical Inspector,
 - 3) Mechanical Inspector,
 - 4) Certified Mechanical Code Official,
 - 5) Master Code Professional,
 - 6) Mechanical Inspector (Uniform Mechanical Code),
 - 7) State Mechanical Inspector CMC.
- b) Contractor must submit proper form prescribed by the Board along with documentation of certification listed in (a) 1-7 above.

(2) If at any point the building official wants to become an active heating and air conditioning and/or refrigeration certified contractor, they will be required to submit the appropriate forms as well as pay the full active certification fee for the remainder of the year and each year they hold active certification with the board.

Author: Jeffrey Becraft. Kathy LeCroix

Statutory Authority: *Code of Alabama 1975, Section 34-31-2; Act no. 2009-486*

History: Filed June 19, 2009

440-x-3.14 Apprentice Registration for Heating, Air Conditioning and/or Refrigeration

A person who is not yet a certified heating, air conditioning, or refrigeration contractor, and is engaged in learning and assisting in the installation, service or repair of a heating, air conditioning, or refrigeration system may apply to become a heating and air conditioning apprentice and/or refrigeration apprentice. Each apprentice registration for heating & air conditioning or refrigeration is an independent registration and must be held separately. Annual renewal of a registration is required.

All persons who hold an apprentice registration for a period of two years prior to applying for examination to obtain a certified contractor's license will be automatically eligible to sit for the examination if their registration has been renewed annually. To meet the requirements to become an apprentice, a person must present one of the following criteria listed below:

1. Completes an affidavit provided by the Board and signed by the active certified contractor stating that the applicant is working under the supervision of a certified heating and air conditioning contractor or refrigeration contractor and submits this form to the Board; or
2. Submits an Employer's Verification of Work History form obtained from the Board.

Author: Jeffrey Becraft, Kathy LeCroix

Statutory Authority: *Code of Alabama, 1975 Section 34-31-28(d); Act No. 2009-486*

History: Filed June 19, 2009

440-X-4. CONTINUING EDUCATION REQUIREMENTS FOR CERTIFIED CONTRACTORS

440-X-4-.01. Continuing Education Program; Continuing Education Committee

The Board shall adopt an annual program of continuing education for certified contractors by January 1 of each year. The Board may designate a Continuing Education Committee on an annual basis to assist in the development of a curriculum of courses each year. The Board may charge fees for reviewing continuing education providers, courses and/or instructors.

The Continuing Education Committee may recommend to the Board the approval or disapproval of courses and classes that meet the requirements for continuing education credit hours for certified contractors.

The Board may require all courses or classes that seek status as approved by the Board to first be submitted, along with the appropriate fees, to the Continuing Education Committee for recommended approval or disapproval by the Board.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26, Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-4-.02. Requirements.

Beginning in the calendar year 2010, all certified contractors shall be required to acquire four (4) credit hours of continuing education every year. Hours of credit in excess of the minimum annual requirement may be carried forward and applied to the succeeding calendar year's requirement only; however such hours must be reported in the year in which they were completed and must be

designated as hours to be carried forward. The Board may require certified contractors and providers to submit to the Board proof of compliance with the continuing education requirement on an annual basis to allow the Board to maintain its records regarding continuing education attendance of each certified contractor.

All certified contractors licensed with the Board shall complete the required continuing education hours prior to receiving a renewal of their certification. The failure to complete the minimum continuing education requirements shall prevent the renewal of a certified contractor's license until proof of compliance is submitted in writing to the Board, all late, penalty and delinquent fees are applicable.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama* 1975, Section 34-31-26, Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-4-.03. Deficiency.

In the event medical hardship or emergency prevents a certified contractor from timely complying with the Board's continuing education requirements, the Board may allow the certified contractor to submit a deficiency plan, along with the appropriate fees, on a form prescribed by the Board, for approval by the Board, which shall describe the contractor's plan for compliance with the continuing education requirements. The proposed deficiency plan shall be specific in describing the plan for full compliance with the continuing education requirement and shall be accompanied by the deficiency plan fee established by the Board.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama* 1975, Section 34-31-26, Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-4-.04. Annual Program; Approval of Courses and Curricula.

The annual program of continuing education established by the Board shall contain the procedures and fees, for approval of proposed courses and curricula for credit hours of continuing education by certified contractors. All institutions, organizations, and individuals shall submit proposed courses and curricula, along with the appropriate fees, to the Board's Continuing Education Committee for recommended approval or disapproval by the Board. The Board will consider proposed courses and curricula for approval only after a review of the proposal by the Board's Continuing Education Committee. Requests for approval of proposed courses and curricula shall contain detailed information regarding the instructors to be used; the proposed physical facilities and classrooms, including equipment to be utilized in instruction; the course syllabus, which shall include a sufficient description of the planned instruction, resource materials, and textbooks involved in the instruction; and the length of the course instruction. The proposed courses and curricula should also include the resumes, areas of specialty, and prior teaching experience of proposed instructors.

Upon request to the Board, the Board shall furnish a copy of its standards for approval of proposed continuing education courses and curricula as recommended by the Continuing Education Committee and approved by the Board. The Board shall maintain a list of all approved courses and curricula to assist certified contractors in efforts to comply with the state law requirements of continuing education.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama* 1975, Section 34-31-26, Act No. 2009-486

440-X-4.05. Denial of Application for Course or Curricula; Request for Reconsideration

The Board may deny any application for course or curriculum approval that fails to meet the established standards of the Board or which the Board considers inadequate to properly educate its certified contractors. The Board may consider requests for reconsideration of approval of courses and curricula which have been denied upon a submission of a written request to the Board.

Author: Mark Montiel,

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26, Act No. 2009-486

History: Filed January 21, 2003, June 19, 2009

440-X-4.06. Written Agreement upon Approval.

Upon approval of a proposed course or curriculum by the Board, the Board shall require the approved provider to execute a written agreement to conduct the approved course and curriculum in accordance with the terms of the Board's approval. This agreement shall be signed by the applicant for course and curriculum approval.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26, Act No. 2009-486

History: Filed January 21, 2003, June 19, 2009

440-X-4-.07. Revocation, Suspension, Termination of Curricula

The Board may revoke, suspend, or terminate any course or curriculum approval if the Board determines that a course provider has failed to comply with the Rules of the Board or its continuing education requirements or has failed

to comply with its written agreement regarding conduct of the approved course or curriculum.

The Board may request that a course provider reapply to the Board for approval if the provider has not held any classes for continuing education credit or submitted a roster to the Board for a period of four years. The provider will be required to submit a new application along with all appropriate fees to the Board for approval prior to holding a class for continuing education credit.

Author: Mark Montiel; Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26, Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-4.08. Monitoring of Course and Curricula.

The Board shall have the authority to monitor all approved courses and curricula to insure that approved providers and instructors fully comply with the Rules of the Board and the conditions of approval by the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-26, Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-x-4.09 Over 65 years of Age Exemption from Continuing Education Requirements for Inactive Contractors Only

Any INACTIVE contractor who is 65 years of age or older is exempt from continuing education requirements. The inactive contractor is not eligible for this exemption until the year after they turn 65 years old. This exemption does not apply for the year in which the inactive contractor turns 65 years old.

Example: (1) If the inactive contractor is 64 on January 1, 2010 and turns 65 on January 2, 2010 the inactive contractor does not qualify for the exemption for the 2010 licensing year, however the inactive contractor will qualify for the exemption during the renewal period for the 2011 licensing year.

Example: (2) If the inactive contractor turns 65 on December 31, 2009 they would qualify for the exemption and not be required to have 4 hours of continuing education to renew for 2010 licensing year because their birthday occurred prior to the 2010 licensing year.

Once the inactive contractor returns to active status after the age of 65, they will need to submit 8 hours of Continuing Education prior to receiving an active contractor's license. This exemption does not apply to contractors 65 years or older who hold an active certification.

Author: Jeffrey Becraft, Kathy LeCroix

Statutory Authority: *Code of Alabama, 1975, Section 34-31-26(c), Act No. 2009-486*

History: Filed June 19, 2009

440-X-5 MINIMUM STANDARDS FOR INSTALLATION, SERVICE, AND REPAIR OF HEATING, AIR CONDITIONING OR REFRIGERATION SYSTEMS BY CERTIFIED CONTRACTORS

440-X-5-.01. Minimum Standards for Installation, Service and Repair.

(1) The Board, pursuant to its authority under Section 34-31-21(g), *Code of Alabama 1975*, adopts the following

minimum installation service, and repair standards for all certified heating and air conditioning contractors:

(a) All certified heating and air conditioning contractors shall comply with the minimum standard required by ASHRAE Standard 90.2P, as described in *Energy Efficient Design for Residential Structures*;

(b) All certified heating and air conditioning contractors shall comply with the minimum standards required by ASHRAE 15-94 as described in *Safety Code for Mechanical Refrigeration*;

(c) All certified heating and air conditioning contractors shall comply with the minimum standards required by ACCA/Manual N as described in *Load Calculation for Commercial Summer and Winter Air Conditioning* for using unitary equipment;

(d) All certified heating and air conditioning contractors shall comply with the minimum standards required by ACCA/Manual J as described in *Load Calculation for Residential Winter and Summer Air Conditioning*;

(e) All certified heating and air conditioning contractors shall comply with the minimum standards required by ACCA/Manual D as described in *Duct Design for Residential Winter and Summer Air Condition and Equipment Selection*;

(f) All certified heating and air conditioning contractors shall comply with the minimum standards required and described in the *International Mechanical Code*; including appendices, with the exception of section 601.1, mandating that the insulation value to conform to the requirements of the International Energy Conservation Code, the R value for duct insulation shall be set to a minimum of R 4.2.

(g) All certified heating and air conditioning contractors shall comply with the minimum standards required by and described in the *International Fuel Gas Code*;

(h) All certified heating and air conditioning contractors shall comply with the minimum standards required by and described in the *NFPA 70 National Electrical Code*; 1996

(i) All certified heating and air conditioning contractors shall comply with the minimum standards required and described by applicable local codes or ordinances. Where there is a conflict between the minimum standards adopted *by Board and the applicable local codes or ordinances, the most restrictive will govern*;

(j) All certified heating and air conditioning contractors shall comply with the minimum standards required by and described in *SMACNA HVAC Duct Construction Standards, Metal and Flexible*;

(k) All certified heating and air conditioning contractors shall comply with the minimum standards required by and described in *SMACNA Fibrous Glass Duct Construction Standards*;

(l) All certified contractors shall comply with the minimum standards required by and described in *Refrigeration and Air Conditioning* by ARI, the American Refrigeration Institute;

(m) All certified heating and air conditioning contractors shall comply with the minimum standards required for ACCA or equivalent ductulators;

(n) All certified contractors shall comply with the minimum standards of business law.

(o) All certified heating and air conditioning contractors must comply the minimum standards requires and described in the International Residential Code; including appendices, with the exception of section N1103.2.1, mandating that the duct insulation value, the R value for duct insulation shall be set to a minimum of R 4.2.

(2) The Board, pursuant to its authority under Section 34-31-21(g), *Code of Alabama 1975*, adopts the following minimum installation service, and repair standards for all certified refrigeration contractors:

(a) All refrigeration contractors shall comply with the minimum standards required by ASHRAE 15-94 as described in *Safety Code for Mechanical Refrigeration*;

(b) All refrigeration contractors shall comply with the minimum standards required and described in the *International Mechanical Code*; including appendices, with the exception of section 601.1, mandating that the insulation value to conform to the requirements of the International Energy Conservation Code, the R value for duct insulation shall be set to a minimum of R 4.2;

(c) All refrigeration contractors shall comply with the minimum standards required by and described in the *NFPA 70 National Electrical Code*; 1996

(d) All refrigeration contractors shall comply with the minimum standards required and described by applicable local codes or ordinances. Where there is a conflict between the minimum standards adopted *by Board and the applicable local codes or ordinances, the most restrictive will govern*;

(e) All refrigeration contractors shall comply with the minimum standards required by and described in *Refrigeration and Air Conditioning* by ARI, the American Refrigeration Institute;

(f) All refrigeration contractors shall comply with the minimum standards of business law.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(a); Act No. 2009-486

History: Filed January 21, 2003; October 15, 2008; June 19, 2009

440-X-5-.02. Compliance with Updated or Amended Versions.

Certified contractors shall follow the updated or amended versions of all publications and regulations described in these Rules for compliance with the minimum standards for installation, service, and repair of heating, air conditioning or refrigeration systems.

Author: Mark Montiel; Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g); Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-5-.03. Certified Contractors to Furnish Information to the Board Regarding Installation, Service, and Repair

All certified contractors shall be required to provide the Board, if requested, a copy of the heat gain, heat loss, duct sizing, gas piping calculations drawings or other information used by the certified contractor or concerning the installation, service, and repair of heating, air conditioning or refrigeration systems by the certified contractor.

Author: Mark Montiel; Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g); Act 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-5-.04. Gas Connections.

Certified contractors, who do not hold the appropriate gas fitters license when performing work on heating, air conditioning or refrigeration systems involving gas connections, shall work only the gas piping after the shutoff valve to the unit located ahead of all controls. Certified contractors shall conform and abide by all city, county, and state codes in regard to permits, licenses, and inspections for gas appliance, installation and change outs.

Author: Mark Montiel; Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g); Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-X-5-.05. Installation, Service, and Repair of Heating, Air Conditioning Systems in Modular or Manufactured Housing

Any on-site heating and air conditioning installation of a new system in a previously inspected manufactured structure; service or repair work of a heating and air conditioning system performed on manufactured or modular structure is considered to be under contractual agreement between the owner of the structure and the certified contractor and is within the regulatory authority of the Board.

All persons performing such work on site are required to be certified by the Board. The Board will also refer complaints involving heating and air conditioning systems in manufactured housing to the Alabama Manufactured Housing Commission established by state law.

Upon request by the Alabama Manufactured Housing Commission, the Board will assist in investigations and consumer complaints involving heating and air conditioning systems in manufactured or modular homes. The Board will investigate all illegal or uncertified contractors involved in the installation service, or repair work performed in manufactured or modular home construction.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-21(g); Act No. 2009-486

History: Filed January 21, 2003; June 19, 2009

440-x-5.06 Display of Certification Number and Business Name

(1) Every certified contractor shall display in a prominent, legible manner, The State of Alabama Board of Heating, Air Conditioning and Refrigeration Contractor's certification number and company name on all service and/or installation vehicles used in conjunction with heat and air conditioning contracting. The company name and Alabama certification number shall:

- a. Be at least two inches in height;
- b. Be displayed on at least two sides of the vehicle;
- c. Display the phrase "AL Number"; "AL No."; or "AL #" immediately before the certification number in equal sized print.

(2) Every certified contractor shall display in a prominent, legible manner, The State of Alabama Board of Heating, Air Conditioning and Refrigeration Contractor's certification number and company name on all documentation and forms of advertising, including but not limited to letterhead, proposals, estimates, service tickets, contracts, work orders,

receipts, business cards, yellow page advertisements, flyers, bulletins, mail solicitation, billboard advertisements, television commercials, radio commercials, websites; in conjunction with heat and air conditioning contracting. The company name and Alabama certification number shall:

Display the phrase “AL Number,” “AL No.” or “AL #” immediately before the certification number in equal sized print.

Failure to comply with this provision constitutes a cause for disciplinary action.

Author: Jeffrey Becraft, Kathy LeCroix

History: Filed June 19, 2009

Statutory Authority: *Code of Alabama*, 1975, 31-31-26; *Act No. 2009-486*

440-X-6 DISCIPLINARY AND COMPLIANCE PROCEEDINGS

440-X-6-.01. Violations of State Law and the Rules of the State of Alabama Board of Heating, Air Conditioning and Refrigeration Contractors

All certified contractors and every municipal, county, or state official charged with the responsibility of issuing building or similar permits shall report to the Board the name and address of any person who has violated the state law and/or rules and regulations applicable to the State of Alabama Board of Heating, Air Conditioning and Refrigeration Contractors.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama* 1975, Section 34-31-24

History: Filed January 21, 2003; June 2009

440-X-6-.02. Initiation of Compliance Investigation.

(1) The Board may initiate investigations, as it deems appropriate, to determine compliance with state law and the rules and regulations of the Board.

(2) The Board may also investigate any other actions reported to the Board by written or verbal complaint. The Board may request the personal appearance of the complaining person and may require the submission of a written complaint to the Board containing the factual allegations on which the complaint is based. The Board may also require the complaining person to submit to the Board a written and sworn statement containing the facts involved in the complaint.

(3) The Board shall retain the authority to pursue or discontinue investigations based on the information obtained in its investigation of a complaint, including the cooperation of all persons involved in the complaint to the Board.

(4) The Board may require a certified contractor to submit a written and sworn statement to the Board in response to any complaint or investigation by the Board.

(5) All reports of investigations of complaints shall be submitted to the Investigative Committee of the Board.

1. This Investigative Committee shall be comprised of: at least one Board member; the executive director of the Board; and the Board's attorney. The Investigative Committee shall review the investigation and complaint to determine whether probable cause exists for disciplinary or enforcement proceedings by the Board.

2. The Board member participating in the probable cause determination by the Investigative Committee shall not participate in any disciplinary proceedings of the Board arising from the investigation. The Board shall name the Board member to serve on the Investigative Committee on an annual basis.

No Board members shall serve more than (2) two consecutive complete annual terms on the Investigative Committee. The Board shall have the power to replace or remove the designated Board member serving on the Investigative Committee due to any vacancy in the Board member position caused by any reason. This temporary appointment shall exist until the Board conducts its next required meeting, at which time a replacement Board member shall be named. This temporary Board member may serve the remainder of the existing term on the Investigative Committee and is eligible for appointment to full annual terms as described in these Rules.

The Board shall also have the power to name a Board member to serve as a substitute appointment to the Investigative Committee for any specific investigation or complaint in which the designated Board member serving an annual term has recused himself or is disqualified from participating due to a conflict of interest, including involvement in the investigation as a possible witness to the facts involved in the investigation.

(6) The Board shall refer any and all investigations involving possible criminal violations of state law to the State Attorney General or other appropriate state or local law enforcement agency. The Board shall assist these state law and local law enforcement agencies as necessary to insure

that state law and the rules of the Board are complied with by all certified contractors.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

History: Filed January 21, 2003

440-X-6-.03. Administrative Complaint Procedures

(1) Upon a determination of probable cause by the Investigative Committee that disciplinary proceedings are necessary against a certified contractor, the Board's attorney shall prepare a summons and administrative complaint to be executed by the executive director on behalf of the Board.

(2) The Board shall serve a copy of the summons and administrative complaint on the certified contractor or other person against whom the administrative complaint has been filed. The method of service by the Board shall be either by certified mail, return receipt requested or personal service. In the event the Board is unable to obtain service of the summons and administrative complaint by certified mail or personal service, the Board or its attorney may serve the summons and administrative complaint by first class mail to the most recent address on file with the Board of the certified contractor or other person against whom the administrative complaint has been filed.

(3) The summons and administrative complaint shall give notice in substantial compliance with the Alabama Administrative Procedures Act, Section 12(b).¹

¹ Alabama Administrative Procedure Act, Section 12(b) reads as follows:
The notice shall include

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved; and

(4) Upon service of the administrative complaint, the Board shall schedule an administrative hearing to be held within four months of the date of service of the summons and administrative complaint by certified mail or personal service. If the method of service is by first class mail as described in these Rules, The Board shall schedule the administrative hearing to be held within five months of the date of mailing the summons and administrative complaint. The administrative hearing shall be held at the offices of the Board or other location designated by the Board.

(5) If the person against whom the administrative complaint has been filed is a member of the Board, that Board member shall be notified in writing of the administrative charges by the Board's executive director and shall not participate in any proceedings or meetings related to the complaint.

(6) The Board's attorney shall serve as the prosecuting attorney for the Board in all administrative charges issued by the Board. The Board's attorney shall present evidence in support of the administrative complaint at the administrative hearing conducted by the Board or its Hearing Officer.

(7) If, following its investigation, the Investigative Committee determines that no probable cause exists, the investigative proceedings shall be terminated and that particular investigation closed.

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- (4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

Section 41-22-12(b), *Code of Alabama 1975*.

(8) At all times during the investigation process, including the period of time that the Investigative Committee has begun its investigation, the Board may enter into informal settlement agreements, provided that the informal settlement is ratified and approved by the Board.

(9) The Board retains the discretionary authority to invoke the administrative complaint procedures set forth in these Rules against any unlicensed contractor in lieu of instituting criminal proceedings against the unlicensed person. This provision does not restrict in any manner the authority of other state or local law enforcement agencies to pursue criminal penalties as otherwise provided by state law.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

History: Filed January 21, 2003

440-X-6-.04. Informal Settlement Proceedings

(1) The Board or other party to an administrative proceeding may initiate informal settlement negotiations to resolve the administrative complaint or investigation by the Board.

(2) Neither the Board nor any other party is obligated or required to use informal settlement procedures or to participate in informal settlement negotiations.

(3) Any informal settlement shall be to terms that are negotiated to be in the best interest of the Board and the public and shall not become final until ratified and approved by the Board. All informal settlement agreements ratified and approved by the Board shall be incorporated by reference in the official minutes of the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

440-X-6-.05. Consolidation of Administrative Proceedings

(1) The Board or its Hearing Officer may order the consolidation, in whole or in part, of two or more administrative proceedings whenever it appears that the matters are substantially related and that such consolidation would expedite or simplify consideration of the issues and no party would be prejudiced thereby. This consolidation may involve multiple cases involving the same parties or may involve multiple cases involving different parties provided that the other requirements of consolidation have been met.

(2) Any party may request that the Board or its Hearing Officer sever any part of an administrative proceeding that has been consolidated when it appears the consolidation will not expedite or simplify consideration of the issues or that any party will be prejudiced by the continued consolidation of proceedings.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.06. Motions

(1) All motions, except those made orally on the record during an administrative hearing, shall be in writing and state the grounds in support of said motion. All motions shall describe the relief sought and include any legal authority relied upon for said relief. A copy of each motion filed with the Board shall be served on all other parties accompanied by a certificate of service describing the method of service of the motion on the other parties.

(2) The Board or its Hearing Officer may permit the non-moving party to file a response to any motion. Any

response filed shall be served on the other parties in the same manner as required for the filing of motions.

(3) Any party may submit affidavits or other legal evidence in support of a motion or response; provided that said evidence is served on the other parties as an attachment to the motion or response filed with the Board.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.07. Prehearing Procedures

(1) The time requirements for conducting an administrative hearing may be waived by the filing of a written joint motion of the parties indicating an agreement to delay the proceedings and including a brief statement of the reasons for the requested delay. The Board or its Hearing Officer shall retain the discretionary authority to grant or deny the request to delay the proceedings.

(2) The Board or its Hearing Officer may require the parties to appear at a specified time and place in advance of the hearing for one or more prehearing conferences to consider: the settlement of the case; the identification and/or clarification of the contested issues; the submission of admissions or stipulations to facts; the stipulation to the genuineness of documents that avoid unnecessary witnesses or proof; the identification of any facts of which official notice is proposed to be taken; the identification of any expert witnesses expected to testify and the substance of any opinion to which the expert witness may testify; and any other such matters that may be necessary or relevant to the determination of the issues involved in the administrative hearing.

(3) The Board or its Hearing Officer shall issue a written prehearing order reciting the actions taken at any

prehearing conference, including any stipulations or agreements by the parties regarding the issues to be resolved at the administrative hearing.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32' 34-31-33

History: Filed January 21, 2003

440-X-6-.08. Prehearing Discovery

(1) Prehearing discovery shall be permitted only upon a determination by the Board or its Hearing Officer that: the discovery will not unreasonably delay the proceedings; the discovery sought has significant probative value to the issues involved in the administrative hearing, that the discovery sought will prevent fraud; the discovery sought will prevent undue surprise at the administrative hearing; and/or the discovery sought will otherwise provide fundamental fairness to the parties to the administrative hearing. All discovery sought must relate to the charges contained in the administrative complaint or the defenses to those charges.

(2) The following methods of discovery are available, pursuant to the discretion of the Board or the Board's Hearing Officer:

1. Depositions upon oral examinations of expert witnesses;
2. Interrogatories to the Respondent;
3. Production and copying of documents and things;
4. Request for admissions to the Respondent;
5. Requests for entry upon land for inspection and other purposes against any person;

(3) All discovery should be conducted in accordance with any terms and conditions imposed by the Board or its Hearing Officer. These terms and conditions may be imposed to protect the parties or other persons from annoyance, embarrassment, oppression, or undue burden and expense. Court reporter's fees and reasonable copying costs shall be borne by the party requesting discovery.

(4) Depositions of all parties and their employees, agents, and other persons under their control shall be conducted at the Board's offices in Montgomery, Alabama, unless another location is agreed upon by all parties.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32' 34-31-33

History: Filed January 21, 2003

440-X-6-.09. Subpoenas.

(1) The attendance of witnesses may be required by subpoena. The Chairman of the Board or the Board's Hearing Officer may grant a request for a subpoena upon a showing that the evidence sought is necessary, relevant, and material to the administrative hearing or investigation by the Board. The subpoena may be issued by the Chairman of the Board, the Board's Hearing Officer, or other person designated by the Board.

(2) The production of documentary evidence may also be required by subpoena. These subpoenas may be issued according to the same requirements and conditions for those subpoenas to compel the attendance of witnesses.

(3) Subpoenas shall be served in accordance with the Alabama Rules of Civil Procedures.

(4) Witnesses summoned to appear shall be paid the same as state court fees and mileage expenses that are paid to witnesses appearing in the courts of Alabama.

These witness fees and mileage expenses shall be paid by the party seeking the appearance of the witness.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.10. Failure of a Party to Appear.

If a party fails to appear at a hearing after being given notice of the hearing as required by these Rules, the Board or the Board's Hearing Officer may proceed with the hearing in the absence of the party.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-.11. Administrative Hearing Procedures.

(1) The Board may appoint a person to act on its behalf as Hearing Officer at its administrative hearings. The Hearing Officer shall preside at administrative hearings and shall rule on all questions of evidence and procedure. The Hearing Officer shall admit all evidence that is relevant, material, and which has probative value to the issues under consideration by the Board. Offers of settlement and compromise are not admissible. The Hearing Officer shall consider the evidence presented and submit a recommendation to the Board, including: a procedural summary of the case; findings of fact; conclusions of law; and a recommended decision on the issues included in the administrative complaint including, if necessary, suggested administrative punishment pursuant to the charges in the administrative complaint. The Hearing Officer's recommendations shall be considered by the Board but is not binding on the Board. The Board shall issue an appropriate administrative order modifying, approving, or rejecting the Hearing Officer's recommendation. The Board shall issue its

orders within sixty (60) days after receipt of the hearing Officer's recommendation. If the hearing was conducted by the Board itself, the Board shall issue its order within sixty (60) days after receipt of the court reporter's transcript of the administrative hearing. The Board's order in all instances shall include a procedural history of the case, findings of fact, conclusions of law, and its decision regarding the issues contained within the administrative complaint including, if necessary, the appropriate administrative punishment.

(2) Prior to the taking of witness testimony at the administrative hearing, the Respondent or Respondents shall enter a plea of "guilty" or "not guilty" to each charge contained in the administrative complaint.

(3) All parties shall be allowed to make a concise opening statement regarding the charges in the administrative complaint, defenses to the administrative complaint, expected testimony and evidence, and any proposed administrative punishment.

(4) The parties shall be allowed to present evidence by direct and cross-examination. The executive director, or a designee acting on behalf of the Investigative Committee, shall present its evidence first followed by the other parties in the order determined by the Board or its Hearing Officer. Examination of witnesses shall not be unduly repetitious. The testimony of all parties and witnesses shall be made under oath administered by the Board or the Board's Hearing Officer.

(5) The Board or the Board's Hearing Officer may examine and question any party or witness regarding the administrative complaint and defenses thereto.

(6) All parties shall be allowed to make a brief closing statement summarizing the evidence presented and

regarding the applicability of relevant state law and/or Board rules and regulations.

(7) All testimony and statements given in the administrative hearing shall be electronically or stenographically recorded. Any party wishing to obtain a transcript of the hearing shall make arrangements with the court reporter to receive a copy of the transcript at their own expense.

(8) The parties shall not be bound by the strict rules of evidence prevailing in the courts. Evidence shall be admitted in accordance with the Alabama Administrative Procedures Act, Section 13.² The administrative complaint

² Alabama Administrative Procedures Act, Section 13 reads as follows:
In contested cases:

- (1) The rules of evidence as applied in nonjury civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Except as hereinafter provided, objections to evidentiary offers may be made and shall be noted in the record. Whenever any evidence is excluded as inadmissible, all such evidence existing in written form shall remain a party of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof by means of a brief statement on the record describing the testimony excluded. All rulings on the admissibility of evidence shall be final and shall appear in the record. Subject to these requirements, when a hearing will be expedited and interests of the parties will not be prejudiced substantially, any part of the evidence may be received or may be required to be submitted in verified form; provided, the adversary party shall not be denied the right of cross-examination of the witness. The testimony of parties and witnesses shall be made under oath. Provided, however, in the hearing of a contested case where judicial review of the case is by trial de novo, the agency may announce that it shall not be necessary that objections be

and all attachments thereto shall be made a part of the administrative record for consideration by the Board without further authentication.

made during the hearing and upon such announcement, it shall not be required or necessary that objection to be made to any testimony or evidence which may be offered by either party, and on the consideration of such cases the agency shall consider only such testimony and evidence as is relevant, material, competent and legal, and shall not consider any testimony or evidence which is irrelevant, immaterial, incompetent or illegal, whether objection shall have been made thereto or not, and whether such testimony be brought on direct, cross or re-direct examination, or is hearsay. The agency shall not be required to point out what testimony or evidence should be excluded or not considered. Either party, on submission, shall have the privilege of calling attention to any testimony or evidence which is deemed objectionable. If specific objection be made to any evidence and a ruling made thereon by the agency, this exception shall not apply to such evidence.

- (2) Documentary evidence otherwise admissible may be received in the form of copies of excerpts, or by incorporation by reference to material already on file with the agency. Upon request, parties shall be given an opportunity to compare the copy with the original.
- (3) A party may conduct cross-examination required for a full and true disclosure of the facts, except as may otherwise be limited by law.
- (4) Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as party of the record of decision that fairness to the parties does not require an opportunity to contest such facts.
- (5) The experience, technical competence, and specialized knowledge of the agency may be utilized in the evaluation of evidence.

Section 41-22-13, *Code of Alabama 1975*.

(9) The Board or its Hearing Officer may admit into evidence the deposition of any witness who is not subject to the subpoena power of the Board or who is unable to be present to testify at the hearing because of death, physical or mental illness, or other good reason at the discretion of the Board or its Hearing Officer.

(10) All exhibits that are offered into evidence, whether admitted or not, shall be made a part of the administrative record in the case and be included as part of the court reporter's original transcript of the hearing. The party who offers each exhibit shall be permitted to substitute a true copy of the exhibit for the original exhibit upon request to and permission by the Board or its Hearing Officer.

(11) All objections concerning the conduct of the hearing or the admission of evidence may be stated orally or filed in writing during the hearing. The objections and responses thereto shall include a statement of the grounds for the objection and legal authority relied upon. The ruling on the objection by the Board or the Board's Hearing Officer shall be made a part of the administrative record of the hearing. Any party may make an offer of proof regarding evidence that is not admitted and may describe the general nature of the evidence offered and not admitted as part of the administrative record of the hearing.

(12) The Board or the Board's Hearing Officer may allow the parties to submit for consideration a proposed order or recommendation which includes a procedural history, proposed findings of fact, conclusions of law, and any suggested administrative punishment. The parties shall cite the appropriate pages of the hearing transcript for any proposed findings of fact.

(13) The administrative hearing shall be otherwise conducted in compliance with the provisions and in

accordance with the Alabama Administrative Procedures Act, Section 41-22-12, *et. seq.*, *Code of Alabama 1975*.

Author: Mark Montiel

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32; 34-31-33

History: Filed January 21, 2003

440-X-6-12. Penalties.

(1) The Board may, in its discretion, issue a written public or private reprimand or remove, revoke, or suspend the certification of any certified contractor who provides substandard or dangerous service, repair, or installation, or who otherwise violates state law or the rules and regulations of the Board.

(2) The issuance of two or more written letters of public reprimand to a certified contractor may serve as probable cause for the Investigative Committee to proceed with administrative charges to seek the revocation or suspension of the contractor's certification by the Board, pursuant to an administrative hearing described in these rules.

(3) The Board may, in addition to or in lieu of other penalties, levy and collect administrative fines for serious violations of state law or the rules and regulations of the Board of not more than \$2000.00 for each violation.

Author: Mark Montiel, Kathy LeCroix

Statutory Authority: *Code of Alabama 1975*, Section 34-31-32

History: Filed January 21, 2003; June 19 2009